

2/24/09

Minutes
Alabama Environmental Management Commission
Rulemaking Committee Meeting
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama
January 9, 2009

This is to certify that the Minutes contained herein are a true and accurate account of actions taken by the Rulemaking Committee on January 9, 2009.

A handwritten signature in dark ink, appearing to read "Anita L. Archie", is written over a horizontal line.

Anita L. Archie, Chair
Rulemaking Committee

Certified this 20th day of February 2009.

Minutes
Alabama Environmental Management Commission
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1400 Coliseum Boulevard
Montgomery, Alabama
January 9, 2009

Convened: 10:00 a.m.
Adjourned: 11:55 a.m.

Part A

Transcript

Part B

Attachment 1 - Agenda

Part A

AEMC RULEMAKING COMMITTEE MEETING - 1/9/2009

<div style="text-align: right;">Page 1</div> <p style="text-align: center;">ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION RULEMAKING COMMITTEE MEETING</p> <p style="text-align: center;">Alabama Department of Environmental Management Building Alabama Room (Main Hearing Room) 1400 Coliseum Boulevard Montgomery, Alabama</p> <p style="text-align: center;">January 9, 2009 11:00 a.m.</p>	<div style="text-align: right;">Page 3</div> <div style="border-left: 1px solid black; padding-left: 10px;"> <p>1 MS. ARCHIE: It's 11</p> <p>2 o'clock, and I call the meeting of Rules</p> <p>3 Committee to order. We do have a quorum.</p> <p>4 The first item for</p> <p>5 consideration is the minutes of the</p> <p>6 meeting held on June 1st, 2007.</p> <p>7 MR. PHILLIPS: And a motion</p> <p>8 that we accept the minutes.</p> <p>9 MR. WAINWRIGHT: Second.</p> <p>10 MS. ARCHIE: All in favor,</p> <p>11 say aye.</p> <p>12 ALL: Aye.</p> <p>13 MS. ARCHIE: The motion</p> <p>14 carries. Next item is discussion and</p> <p>15 consideration of Commission Rules of</p> <p>16 Conduct to recommend to the full</p> <p>17 Commission for rulemaking. Discussion?</p> <p>18 I will at this time call on Commissioner</p> <p>19 Phillips.</p> <p>20 MR. PHILLIPS: Thank you,</p> <p>21 Madam Chair. I think it's probably most</p> <p>22 important to talk a little bit about how</p> <p>23 we got to this point. We had a</p> </div>
<div style="text-align: right;">Page 2</div> <div style="border-left: 1px solid black; padding-left: 10px;"> <p>1 COMMITTEE MEMBERS PRESENT:</p> <p>2 ANITA L. ARCHIE, CHAIR</p> <p>3 SAM H. WAINWRIGHT, P.E.</p> <p>4 W. SCOTT PHILLIPS</p> <p>5</p> <p>6 ALSO PRESENT</p> <p>7 ONIS "TREY" GLENN, III, ADEM DIRECTOR</p> <p>8 ROBERT TAMBLING, EMC LEGAL COUNSEL</p> <p>9 DEBI THOMAS, EMC EXECUTIVE ASSISTANT</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> </div>	<div style="text-align: right;">Page 4</div> <div style="border-left: 1px solid black; padding-left: 10px;"> <p>1 discussion -- you have minutes in your</p> <p>2 package -- relative to two meetings; one</p> <p>3 was August the 22nd, 2008, and the other</p> <p>4 was our December meeting in 2008.</p> <p>5 In the August meeting, we</p> <p>6 talked about the Code of Conduct that the</p> <p>7 Commission had talked about pulling</p> <p>8 together. I had compiled at that time</p> <p>9 input from several commissioners, which a</p> <p>10 copy of that compilation is in your</p> <p>11 package, and brought back to the</p> <p>12 Commission in that meeting that my belief</p> <p>13 was, many of the things that were stated</p> <p>14 in that compilation would require</p> <p>15 rulemaking or modification of our rules</p> <p>16 should we decide that we wanted to accept</p> <p>17 those comments or input from the</p> <p>18 Commission.</p> <p>19 In our December</p> <p>20 meeting -- and we talked about referring</p> <p>21 that to the Rules Committee. In our</p> <p>22 December meeting, our new chair, Dr.</p> <p>23 Gardner, asked that this Committee take</p> </div>

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<p>1 that up and look at it.</p> <p>2 If you look at the</p> <p>3 compilation, there are really four areas</p> <p>4 of input that we received from the</p> <p>5 commissioners. One was the authority of</p> <p>6 the Chair, the Vice-Chair, and Commission</p> <p>7 members in doing our business; two was</p> <p>8 the Commission and Commission member</p> <p>9 communications, and three was the</p> <p>10 Commission and commission member</p> <p>11 relationships with the Department and the</p> <p>12 Department's Director. And then the</p> <p>13 final was really a kind of catch-all of</p> <p>14 other behaviors for the Commission and</p> <p>15 Commission members, kind of accepted</p> <p>16 rules of behavior.</p> <p>17 Each one of those areas, I</p> <p>18 put down the comments that came from</p> <p>19 Commissioners that fell into each of</p> <p>20 those categories, and I think from a rule</p> <p>21 perspective, the one that's probably the</p> <p>22 most relevant is the one of the authority</p> <p>23 of the Chair and the Vice-chair.</p>	<p>1 together from the Commissioners' input as</p> <p>2 really the basis of our discussion.</p> <p>3 MS. ARCHIE: Commissioner</p> <p>4 Wainwright?</p> <p>5 MR. WAINWRIGHT: Madam</p> <p>6 Chair, I -- I looked at these. There's a</p> <p>7 lot of thou-shall-nots in here. The -- I</p> <p>8 looked at it from a little different</p> <p>9 standpoint, and that was the ways that</p> <p>10 these problems we have can be enforced.</p> <p>11 And, you know, I don't think we've got</p> <p>12 the right to dictate the rules of conduct</p> <p>13 to our fellow members. I just don't</p> <p>14 think we've got that authority. And</p> <p>15 first, I don't think we can enforce it if</p> <p>16 we did.</p> <p>17 But looking at what we do</p> <p>18 have, we've got the -- our current</p> <p>19 Commission rules, 335-2-3, and in there,</p> <p>20 we have items that tell us what we can do</p> <p>21 as far as officers are concerned and</p> <p>22 members. And if those need tweaking, we</p> <p>23 can make the changes to that section.</p>
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<p>1 I think the others are</p> <p>2 really protocols, ways that we expect our</p> <p>3 Commission to behave, ways that we expect</p> <p>4 our Commissioners to represent the full</p> <p>5 Commission and to work with the</p> <p>6 Department, and those I think are less</p> <p>7 necessary, although I think there are</p> <p>8 some -- some -- some items, for example,</p> <p>9 in communications that if we really do</p> <p>10 not -- or if we really want Commissioners</p> <p>11 communicating with other agencies on</p> <p>12 behalf of themselves, we probably don't</p> <p>13 want them doing that on letterhead with</p> <p>14 all of our names on it.</p> <p>15 And I think we've made some</p> <p>16 of those changes so that we can deal with</p> <p>17 those types of things. That doesn't</p> <p>18 necessarily require rulemaking. I do</p> <p>19 think that it does require making some</p> <p>20 decisions relative to things like that.</p> <p>21 So I think maybe I would</p> <p>22 recommend that we kind of go through the</p> <p>23 standards of conduct that I pulled</p>	<p>1 Other things we have is</p> <p>2 we've adopted Robert's Rules of Order,</p> <p>3 and in Robert's Rules, we have things</p> <p>4 that we can do in Robert's Rules to</p> <p>5 control the activities of the Commission</p> <p>6 and its members during meetings</p> <p>7 primarily, or -- or in its work effort.</p> <p>8 And we work as a Commission</p> <p>9 through committees, and I think one of</p> <p>10 our problems has been that we have failed</p> <p>11 to work through committees. Some of the</p> <p>12 issues that have come before us, the</p> <p>13 individuals want to go different ways.</p> <p>14 And I'm guilty of that, and I think</p> <p>15 everybody is unless there's some control</p> <p>16 put on it.</p> <p>17 Another way we have of</p> <p>18 controlling the Commission's activities</p> <p>19 are through instructions to the Director.</p> <p>20 We can give him advice, if you want to</p> <p>21 call it that; but instructions on how to</p> <p>22 handle communication between the</p> <p>23 Commissioners, or with Commissioners. We</p>

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<p>1 have to act as a body to do that. We</p> <p>2 can't -- the Chair can't dictate that.</p> <p>3 It's got to come from the Commission.</p> <p>4 But if, for instance, if we</p> <p>5 tell the Commissioner -- the Director</p> <p>6 that any request from Commissioners must</p> <p>7 be passed by the Chair for advice or</p> <p>8 consent, I'm sure the Director would be</p> <p>9 happy to do that.</p> <p>10 The -- we have other ways</p> <p>11 of -- we can take actions through -- of</p> <p>12 the Commission through -- through -- I</p> <p>13 guess just pass a resolution that</p> <p>14 we -- would help control the Commission.</p> <p>15 We can do it through, I guess, AG</p> <p>16 opinions also, and also as a last resort,</p> <p>17 rule changes.</p> <p>18 So I'd like to look at what</p> <p>19 Mr. Phillips has presented to us, and</p> <p>20 then see what means of enforcement we</p> <p>21 could use before we look at rule changes.</p> <p>22 Let's look at rule change as a last</p> <p>23 thing.</p>	<p>1 again -- meet again as a Rules Committee</p> <p>2 with what our recommendation would be so</p> <p>3 far as for potential rule, AG's opinion</p> <p>4 or whatever, and then recommend that to</p> <p>5 the full Commission.</p> <p>6 Commissioner Phillips?</p> <p>7 MR. PHILLIPS: I would agree</p> <p>8 with both of you. Part of the reason</p> <p>9 when I brought this back up in August was</p> <p>10 my concern that there were a lot of</p> <p>11 things in here that would require rules,</p> <p>12 and I'm not sure that's something that we</p> <p>13 really wanted to go through. So I think</p> <p>14 that's a wonderful idea.</p> <p>15 I do have one concern about</p> <p>16 what Sam said that I want to express.</p> <p>17 And this may not have been what you</p> <p>18 meant, Sam. But you referred to if</p> <p>19 somebody asked the Director something,</p> <p>20 that the Director could go to the Chair</p> <p>21 and kind of present it. My only concern</p> <p>22 with that is, having been the Chair, is</p> <p>23 that I don't think we need to continually</p>
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<p>1 MS. ARCHIE: I would agree</p> <p>2 that looking at this document, it does</p> <p>3 require, I think, further -- further</p> <p>4 study. I do believe that based on -- we</p> <p>5 did receive comments from Dr. Gardner,</p> <p>6 who could not join us today, that this is</p> <p>7 something that she really would like to</p> <p>8 see us move swiftly on and get this</p> <p>9 addressed. I do agree with her -- with</p> <p>10 her comments that she has distributed to</p> <p>11 us.</p> <p>12 This document is -- is a lot</p> <p>13 of shall-nots in it; is a lot of code of</p> <p>14 conduct. And I do believe you've</p> <p>15 offered -- Mr. Wainwright, you've offered</p> <p>16 some good suggestions so far as us</p> <p>17 looking into, before rule change, things</p> <p>18 that we can possibly do.</p> <p>19 So I would like to throw</p> <p>20 this out for possible consideration, that</p> <p>21 maybe I work with legal counsel to</p> <p>22 actually study this document and then</p> <p>23 bring it back to what we -- come back</p>	<p>1 put the Director between the Chair and a</p> <p>2 Commission member.</p> <p>3 If -- as a Commission we're</p> <p>4 going to agree that before a Commissioner</p> <p>5 asks the Department to do something that</p> <p>6 it should be the -- at least the majority</p> <p>7 of the Commission that asks for that to</p> <p>8 be done, that's a pretty precarious</p> <p>9 position to be in, I think, as a Director</p> <p>10 to have one Commissioner coming to you</p> <p>11 asking you to do something; and then</p> <p>12 saying, Well, I would do that but, let me</p> <p>13 go clear that with the Chair first.</p> <p>14 I think as a body, we need</p> <p>15 to all agree -- and that's more than the</p> <p>16 three of us sitting here -- that before</p> <p>17 we go and direct the Department to expend</p> <p>18 resources -- limited resources, limited</p> <p>19 time on efforts, that we should have that</p> <p>20 discussion as a body, or as a</p> <p>21 Commissioner with the Chair, instead of</p> <p>22 asking the Director to go have that</p> <p>23 discussion with the Chair.</p>

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<p style="text-align: right;">Page 13</p> <p>1 MS. ARCHIE: Commissioner 2 Wainwright? 3 MR. WAINWRIGHT: In defense 4 of the -- what I said, if the -- 5 MR. PHILLIPS: And I may 6 have misunderstood it. 7 MR. WAINWRIGHT: Well, I 8 think you understood it. I don't -- we 9 have to look at what authority we have. 10 We have authority -- we don't have 11 authority to control each other, but we 12 do have authority to control what the 13 Director does. 14 And it may be uncomfortable 15 at first, but if the -- if the -- if 16 there is a resolution instructing him to 17 work with with the Chair on issues that 18 are brought before him, then he 19 has -- this is an inhibiting force that 20 will prevent a Commissioner from just 21 demanding that he do something for him. 22 And I think that that would be a -- it 23 would be a balance.</p>	<p style="text-align: right;">Page 15</p> <p>1 just what our lines of authority are. 2 MS. ARCHIE: Legal counsel? 3 MR. TAMBLING: Commissioner 4 Wainwright, this document here contains 5 some very broad proposals. I could go 6 through them one by one, or if there's a 7 proposal in here that you're concerned 8 about, I'll be more than happy to address 9 it with you. 10 MR. WAINWRIGHT: Let's first 11 -- let's look at the first -- at the 12 Commission rules. 13 MR. TAMBLING: Uh-huh. 14 MR. WAINWRIGHT: Get some 15 idea of what our authorities are there as 16 officers and members. 17 MR. PHILLIPS: While you're 18 doing that, Robert and Madam Chair -- 19 MS. ARCHIE: Yes. You're 20 recognized. 21 MR. PHILLIPS: Thank you. 22 Debi, do we have the statute here? Do we 23 have the statute beyond just our rules?</p>
<p style="text-align: right;">Page 14</p> <p>1 And you're right, you don't 2 want to play him off against each 3 individual Commissioner, but if that 4 rule's out there, I think the 5 Commissioners would be more inclined to 6 go by that. 7 MR. PHILLIPS: I understand. 8 I think we're violently in agreement. 9 Because I think when you said resolution 10 or a rule out there that would direct the 11 Director to go to the Chair for anything, 12 then that says this body said we expect 13 you to talk to the Chair -- 14 MR. WAINWRIGHT: That's what 15 I'm saying. 16 MR. PHILLIPS: Yeah. And so 17 I think we're violently in agreement. 18 MS. ARCHIE: I think all 19 three of us are in agreement on that 20 issue. 21 MR. WAINWRIGHT: Madam 22 Chair, from what you said a minute ago, 23 I'd like to hear from legal counsel on</p>	<p style="text-align: right;">Page 16</p> <p>1 MS. THOMAS: Yes, I have it. 2 You need me to go get it? 3 MR. PHILLIPS: No. I was 4 just wondering, if we get to that, 5 because seems to me, as we look at our 6 rules, we can make rules all day long. 7 We can make them to even try to control 8 one another, but if statute doesn't give 9 us the authority to do that, it doesn't 10 -- we won't have the ability to do that. 11 So I guess when I think 12 about what authority do we have, I guess 13 I'm curious how the statute speaks to 14 that. 15 MR. TAMBLING: Well, you 16 have to have statutory authority for any 17 rules that you promulgate. That's 18 fundamental to any kind of discussion 19 about rule change. I think you certainly 20 have the statutory authority for all of 21 the rules governing the officers and the 22 duties of the Chair, which are enumerated 23 in Section 335-2-3-.04.</p>

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<p>1 But there's no question that 2 if you want to add additional duties, we 3 would have to take a look and see whether 4 or not the statutory authority for that 5 exists. Commissioner Phillips is 6 absolutely right. 7 Now, you do have -- I mean, 8 there has been some discussion here today 9 to possibly amend Rule 335-2-3-04 to 10 include additional duties for the Chair. 11 MS. THOMAS: Pardon me, 12 Robert. I believe it's Section .03 -- 13 MR. TAMBLING: .03 I'm 14 sorry. I'm looking at the -- 15 MS. THOMAS: .03, Officers. 16 MR. TAMBLING: Right. It's 17 .03. If, for instance, you want the Chair 18 to set the agenda, even though that's 19 probably already done already -- I assume 20 that's in effect what's happening -- you 21 probably need to go to rulemaking on 22 that. 23 MR. WAINWRIGHT: We could</p>	<p>1 resolution as the two of you discussed. 2 I'm not sure you need to go to rulemaking 3 for that. You could just, as a practical 4 matter, do that. 5 MR. WAINWRIGHT: Do we have 6 the authority to pass such a resolution? 7 MR. TAMBLING: I believe you 8 do. 9 MR. PHILLIPS: Madam Chair? 10 MS. ARCHIE: Commissioner 11 Phillips? 12 MR. PHILLIPS: It would 13 appear to me, Robert -- 14 MR. TAMBLING: May I say 15 something first? 16 MR. PHILLIPS: Sure. 17 MR. TAMBLING: What I meant 18 to say on that is if you have -- on a 19 case-by-case basis, if there's an issue 20 that's coming before you, I think you 21 could pass a resolution to have the Chair 22 communicate with the Director and then 23 report back to the Commission. I'm not</p>
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<p>1 use Rule .04. I think it specifies the 2 Chair -- 3 MR. TAMBLING: I need to 4 look at that, to be honest with you. Mr. 5 Wainwright, you've always been the 6 parliamentarian in the group. You are 7 far more familiar with Robert's Rules. I 8 look for you -- to you for guidance -- 9 MR. WAINWRIGHT: This is the 10 one I know. 11 MR. TAMBLING: But you're 12 probably right about that. 13 MR. WAINWRIGHT: And this is 14 the one that counts. 15 MR. TAMBLING: You're 16 probably right about that. I suppose to 17 some extent it might be desirable for the 18 Chair to be able to liaison with the 19 Director, engage in communications with 20 the Director for the benefit of the 21 Commission. At some point, I would 22 imagine that before that happens, you 23 would probably want to have some sort of</p>	<p>1 sure you have the authority to carte 2 blanche give the Director authority to 3 always communicate with the Director. I 4 think you might need rulemaking for that. 5 MR. PHILLIPS: I want to 6 clarify one thing, and then I want to 7 make a statement relative to that issue. 8 One is, I want to reiterate that this 9 document here is not mine. It's 10 not -- and frankly, if you read some of 11 the things under each of the categories, 12 there are contradicting recommendations. 13 So clarity would be needed, 14 even if we decided that we needed to be 15 doing this. As a body, we would have to 16 decide what we would want to do and what 17 we wouldn't want to do. This was nothing 18 more than a compilation of input from 19 multiple Commissioners. 20 So that really indicated 21 that there was a belief on the Commission 22 by a majority of the Commissioners that 23 there needed to be something more than</p>

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<p>1 what was already in the rules. And I 2 reflect back on what I heard and then 3 what I read when they came in, and then I 4 look at this duties, for example, of the 5 Chair -- and this goes even to the 6 Vice-Chair and even to communications and 7 other things. 8 But as an example, pretty 9 much everything that is in here is 10 covered with the exception of two items. 11 And one is, if you look at E, which is to 12 preserve order and decorum at meetings of 13 the Commission, frankly, that said to 14 preserve order and decorum at and outside 15 of meetings. 16 But I don't know how you 17 would enforce it any more than you said, 18 Commissioner Wainwright. And then the 19 other is dealing with the Director. That 20 resolution that you mentioned earlier I 21 think would pick up a lot of the comments 22 that were on here. I kind of like the 23 idea that Madam Chair offered, which is</p>	<p>1 I mean, we can do these 2 things as we go through the year, and I'd 3 just like to start with that 4 resolution. 5 MR. TAMBLING: May I address 6 that? 7 MS. ARCHIE: Yes. 8 MR. TAMBLING: I think we 9 could come up with a draft rule or 10 resolution, whichever one it winds up 11 being, and present it to you. I would 12 follow up on the Chair's suggestion here 13 that we go through all these and we 14 identify the ones that need to be 15 addressed through rulemaking, if 16 necessary, and the other ones that can be 17 addressed through something less than 18 rulemaking; and that we meet again at 19 some point, and we can -- I can present a 20 report to you. 21 The Chair and I can prepare 22 a report and present it to this 23 Committee, and at that point, I think</p>
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<p>1 maybe the best thing to do is for us as a 2 Committee to kind of express what our 3 desires of resolving this are. 4 And you've started, 5 Commissioner Wainwright, relative to if 6 we're going to make rules, that's the 7 last resort. What we're trying to 8 accomplish with the Director and things 9 like that -- and Madam Chair and legal 10 counsel work together to give us 11 something as a Committee to reflect on 12 and see if that meets or accomplishes a 13 recommendation that can be taken back to 14 the Commission. 15 MR. WAINWRIGHT: Could we 16 start this process, let's say, try to 17 develop a resolution that would give the 18 Chair some authority with the Director 19 with regard to requests that come from 20 Commissioners? Could we go ahead and 21 prepare that resolution and let both 22 legal departments look at it and get 23 something moving.</p>	<p>1 we'd have a better idea of where we need 2 to go with rulemaking, if at all. But I 3 would be more than happy to go ahead in 4 the process of doing that and draft 5 something that involves a resolution by 6 the Commission giving the Director some 7 sort of authority. We can -- we can 8 research and decide whether or not that's 9 something that needs to go through 10 rulemaking 11 MR. PHILLIPS: Is that so 12 much giving the Director authority or 13 giving the Director direction on how to 14 respond to a request by a Commissioner? 15 MR. WAINWRIGHT: It's a 16 direction -- 17 MR. PHILLIPS: Yeah, not 18 authority. 19 MS. ARCHIE: Okay. So that 20 I can -- let me make a -- what I'm 21 hearing is, and I need some -- I need a 22 point of clarification. When we're 23 talking about Chair, are we talking about</p>

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<p>1 the Chair that we have elected to serve 2 as Chair of the Commission for that 3 one-year period, or we're talking about 4 the Chair of the various committees? So 5 I throw that out to the two members of 6 Committee. 7 And I say that because if I 8 were -- if I was listening to you -- 9 listening carefully to Commissioner 10 Wainwright, there -- he made the 11 excellent point and said we're not doing 12 a good job of working through committees. 13 So when we're talking about 14 communications with the Director, are you 15 talking about not only the Chair that 16 we've elected of the Commission, or 17 we -- are we also adding in the Chair of 18 the various committees for communication 19 with the Director? 20 MR. WAINWRIGHT: Madam 21 Chair, you could just -- when you word 22 the resolution, you could say 23 unauthorized or unrecognized, or whatever</p>	<p>1 MS. ARCHIE: Yes. Now, one 2 other observation that I'd like to give 3 to that is -- I'm putting on my legal hat 4 here -- if we're talking about a 5 resolution that does this, do we have the 6 authority right now under existing 7 rules -- talking about the 8 committees -- and I'm trying to find that 9 in here when we talk about the 10 committees. 11 MR. PHILLIPS: 2-3-.07. 12 MS. ARCHIE: .07? 13 That -- that -- will this give us -- that 14 could we possibly come at the regular 15 meeting of the Commission and go ahead 16 and have a resolution? Does that give us 17 some -- Legal Counsel, Robert, does that 18 give us any leeway right now that we 19 could go with that type of resolution for 20 the next Commission meeting? 21 MR. TAMBLING: Well, we'd 22 have to draft them real quick to be able 23 to recommend it. We'd have to come up</p>
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<p>1 you want to say, activities requested of 2 the Director. If the Commission has 3 authorized a committee to do something, 4 then I don't think they -- I think they 5 would be exempt from this -- 6 MS. ARCHIE: Let me turn 7 that into a positive statement. That was 8 kind of negative, like no communication. 9 What I am saying is, that any resolution 10 will give authority to the various Chairs 11 of committees as well as the Chair and 12 Vice-Chair that we elect every year to 13 direct the Director in whatever topics 14 that that committee may be dealing with. 15 So that's what -- you know, 16 I would like to term that in a positive 17 way that the resolution would state that 18 that -- that they are authorized to 19 communicate with the -- 20 MR. PHILLIPS: Director. 21 MS. ARCHIE: Yes. 22 MR. WAINWRIGHT: Within the 23 limits of the charge of the committee.</p>	<p>1 with the language today. 2 MR. WAINWRIGHT: Do we have 3 statutory authority to do that? 4 MR. TAMBLING: I see what 5 you're saying. Okay. 6 MR. WAINWRIGHT: I believe 7 we do. We're directed to manage the 8 Director. 9 MR. TAMBLING: Well, you're 10 talking about rulemaking that would apply 11 to the whole EMC. As far as passing a 12 resolution, you're talking about passing 13 a resolution that would authorize the EMC 14 to designate the Chair to work with the 15 Director? Is that right? 16 MR. WAINWRIGHT: Right. To 17 screen the requests that he gets from 18 other Commissioners. 19 MR. TAMBLING: But not -- I 20 mean, I think you could do that on a 21 case-by-case basis, depending on what 22 item is on the agenda. I think you could 23 -- if you were to go through your agenda</p>

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<p style="text-align: right;">Page 29</p> <p>1 at a regular Commission meeting, I think 2 the Commission could -- 3 MR. PHILLIPS: I want to 4 pose a practical example that I think 5 doesn't allow that to happen, because 6 many of the requests that come from 7 Commissioners to the Director come 8 between meeting dates, and they never see 9 the light of day on the agenda until it's 10 forced to be put on the agenda. So there 11 may be a Commissioner that goes to the 12 Director and says, "Hey, I want you 13 to".... 14 Right now, there is no 15 mechanism other than the 16 Director -- which typically, when I was 17 Chair -- I assume he still 18 does -- calling me and saying, I want you 19 to be aware. And then I would have to 20 wait from that point to the next meeting. 21 And that's the reason I asked the 22 Commission to add the Chair Report 23 because it was really the only mechanism</p>	<p style="text-align: right;">Page 31</p> <p>1 MR. TAMBLING: What would 2 the proposed rule or resolution be? I 3 guess I need some clarification on that. 4 MR. WAINWRIGHT: It's a 5 resolution instructing the Director to 6 use -- to ask the Chair or to notify the 7 Chair and ask what disposition the Chair 8 might want to make of -- 9 MR. PHILLIPS: And how they 10 want to handle it. 11 MR. WAINWRIGHT: -- a 12 request that has come in from another 13 Commissioner. 14 MR. PHILLIPS: Whether it 15 should be referred to a committee, 16 whether a special committee should be set 17 up, whether it should be brought up at -- 18 placed on the agenda for the next 19 Commission meeting. I think it's that -- 20 MR. WAINWRIGHT: It gives 21 them a reason not to be forced to go 22 ahead and do it or to be put in the 23 position --</p>
<p style="text-align: right;">Page 30</p> <p>1 to bring something to the Commission. 2 I think what Mr. Wainwright 3 has proposed is an excellent way of 4 saying we all acknowledge that if one of 5 us calls the Director and says, "I want 6 you to do this," that he is then expected 7 to go to the Chair and say, "I want you 8 to be aware that I have been asked to do 9 this." 10 And I would love to see what 11 you just said, Madam Chair, the Chair 12 then say, That's excellent; we have a 13 committee that deals with that issue; 14 let's refer that to the committee and let 15 the committee be involved with it as 16 opposed to the sole, single Commissioner 17 working with the Director. 18 MR. WAINWRIGHT: And the 19 Chair would say that's an item ought to 20 be assigned to a special committee. 21 MR. PHILLIPS: Yeah. And at 22 the next Commission meeting, we'll bring 23 it up.</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. TAMBLING: So if a 2 Commission member -- 3 MR. PHILLIPS: I think it 4 forces transparency, which is what we're 5 looking for. 6 MR. TAMBLING: So if a 7 Commission member were to go to Trey and 8 ask him to take action on an issue, 9 then -- 10 MR. PHILLIPS: He would be 11 obligated -- 12 MR. TAMBLING: -- he would 13 be obligated -- 14 MR. PHILLIPS: And to notify 15 the Chair of that request and to seek the 16 Chair to direct him on the disposition of 17 that matter. 18 MR. TAMBLING: So the 19 resolution might read something to this 20 effect: That upon notification of the 21 Director -- of the Chair by the Director, 22 that what? 23 MR. PHILLIPS: That a</p>

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Page 33	<p>1 Commissioner has requested -- basically,</p> <p>2 it's an issue of him, a Commissioner,</p> <p>3 trying to direct him to use resources of</p> <p>4 the Department.</p> <p>5 MS. ARCHIE: Let me</p> <p>6 get -- let me kind of help you out with</p> <p>7 that a little bit, Robert.</p> <p>8 MR. TAMBLING: Okay.</p> <p>9 MS. ARCHIE: Let me give you</p> <p>10 a life example, okay? There's an article</p> <p>11 in today's Birmingham newspaper talking</p> <p>12 about -- I think it's dust. Something --</p> <p>13 something that's going on. That was in</p> <p>14 the paper. And you have a Commissioner</p> <p>15 call up -- let's use the U.S. Today</p> <p>16 report that came out about the air</p> <p>17 quality, okay?</p> <p>18 MR. PHILLIPS: In schools.</p> <p>19 MS. ARCHIE: In schools.</p> <p>20 Let's use that as a perfect example,</p> <p>21 okay? And you have a Commissioner to</p> <p>22 call up the Director and say, I want a</p> <p>23 report. I have seen this article that's</p>	Page 35	<p>1 the Director, the obligation would be to</p> <p>2 notify the Chair.</p> <p>3 MR. PHILLIPS: I think</p> <p>4 that's where that should be. If it's the</p> <p>5 obligation to notify, I think it's his</p> <p>6 obligation.</p> <p>7 MR. TAMBLING: Well, it just</p> <p>8 depends on how I'm going to write this,</p> <p>9 because I think, you know -- you know.</p> <p>10 MR. PHILLIPS: But I do</p> <p>11 think that there's a second component of</p> <p>12 the resolution, which is there's an</p> <p>13 obligation by the Chair to then decide</p> <p>14 the disposition of the question or the</p> <p>15 activity. And that may be referring it</p> <p>16 to an existing standing committee; may be</p> <p>17 bringing it before the Commission and</p> <p>18 proposing a special committee.</p> <p>19 MR. TAMBLING: Well, then if</p> <p>20 we're going to -- if we're going to refer</p> <p>21 this for rulemaking to the EMC at its</p> <p>22 next meeting -- is that what you want to</p> <p>23 do?</p>
Page 34	<p>1 in USA Today; I want you to do a report,</p> <p>2 okay? And the Director: Okay, I'm going</p> <p>3 to do the report.</p> <p>4 That is what I would call</p> <p>5 under our rule, which is .07, is any time</p> <p>6 to evaluate a particular question. So at</p> <p>7 that time what this resolution would do</p> <p>8 is it would give to the Director to</p> <p>9 contact in this particular instance</p> <p>10 probably the Chair to say that, you know,</p> <p>11 we need to address -- this question has</p> <p>12 been brought up, and the Chair can make</p> <p>13 that determination of it coming to the</p> <p>14 full Commission to be studied.</p> <p>15 MR. TAMBLING: So who do we</p> <p>16 want to put the obligation on? The</p> <p>17 Chair, or do we want to put it on the</p> <p>18 Director?</p> <p>19 MR. WAINWRIGHT: On the</p> <p>20 Director.</p> <p>21 MR. PHILLIPS: You mean the</p> <p>22 obligation to do what?</p> <p>23 MR. TAMBLING: If it was on</p>	Page 36	<p>1 MR. WAINWRIGHT: I think</p> <p>2 so.</p> <p>3 MR. TAMBLING: Then we're --</p> <p>4 we're going to need to come up with some</p> <p>5 language today. I'll have to sit down</p> <p>6 and work that out, and I suggest maybe</p> <p>7 you recess and we come back and --</p> <p>8 MR. PHILLIPS: Madam Chair,</p> <p>9 I move that we recess for -- how long?</p> <p>10 MR. TAMBLING: Five minutes.</p> <p>11 Five or ten minutes.</p> <p>12 MS. ARCHIE: We are</p> <p>13 recessed.</p> <p>14 (Off the record.)</p> <p>15 MS. ARCHIE: We're</p> <p>16 officially back in the meeting. Mr.</p> <p>17 Tambling?</p> <p>18 MR. TAMBLING: Off the</p> <p>19 record, with some assistance, I've come</p> <p>20 up with some language that I would</p> <p>21 propose that we present at some point to</p> <p>22 the Commission. It would read as</p> <p>23 follows: Should a Commission member</p>

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Page 37	<p>1 request the Director to take any action, 2 the Director shall immediately notify the 3 Commission's Chair for direction and for 4 resolution of the matter, period. 5 MR. PHILLIPS: Read it one 6 more time. 7 MR. TAMBLING: Should a 8 Commission member request the Director to 9 take any action, the Director shall 10 immediately notify the Commission's Chair 11 for direction and for resolution of the 12 matter. Maybe the last clause and "for 13 resolution of the matter" isn't -- 14 MR. WAINWRIGHT: And before 15 direction, with regard to the resolution 16 of the matter. 17 MR. TAMBLING: That sounds 18 better to me. 19 MR. PHILLIPS: I think so 20 too. 21 MR. TAMBLING: So we would 22 change the last part to say "for 23 direction and" -- say that again.</p>	Page 39	<p>1 MR. PHILLIPS: With a report 2 to the full Commission. 3 MS. ARCHIE: With a report 4 to the full Commission, because what I do 5 not want to see happen is that that 6 Chair -- there may be an issue that may 7 be of concern of more than just that one 8 Commissioner that had contacted the 9 Director and that Chair not -- you know, 10 make the decision to not do it. We 11 either should have the right at the next 12 full Commission meeting to either vote it 13 up or down, so -- for consideration. 14 I would be -- what I would 15 like to say is -- read the last part one 16 more time for me, Robert. 17 MR. TAMBLING: Okay. I'm 18 doing some of this from memory, because 19 Mr. Wainwright made a good change here. 20 So should a Commission member request the 21 Director to take any action, then the 22 Director -- the Director shall 23 immediately notify the Commission's Chair</p>
Page 38	<p>1 MR. WAINWRIGHT: With 2 regard -- for direction with regard to 3 resolution of the matter. 4 MR. TAMBLING: So it would 5 read again, the last clause, immediately 6 notify the Commission's Chair with 7 direction -- or for direction. 8 MR. WAINWRIGHT: For 9 direction with regard -- 10 MR. TAMBLING: With regard 11 to resolution of the matter. Okay. 12 MS. ARCHIE: I'll add just 13 one thing on that, because I don't want 14 to limit anybody's rights as 15 Commissioner. Including taking the 16 matter -- somewhere along the lines, 17 taking the matter for full consideration 18 of the AEMC body, something along that 19 line. 20 MR. PHILLIPS: Full 21 Commission. 22 MS. ARCHIE: Full 23 Commission.</p>	Page 40	<p>1 for direction with regard to resolution 2 of the matter. 3 MR. PHILLIPS: And the 4 Chair. 5 MS. ARCHIE: And the 6 Chair -- Chair shall report to the full 7 Commission for adoption or -- 8 MR. PHILLIPS: Or just 9 report the disposition to the full 10 Commission. 11 MS. ARCHIE: Full 12 Commission. 13 MR. WAINWRIGHT: Make that 14 another sentence. 15 MR. PHILLIPS: Yeah. 16 MR. TAMBLING: All right. 17 Period. The Chair shall report.... 18 MR. PHILLIPS: The 19 disposition of the matter to the full 20 Commission at the next 21 regularly-scheduled meeting. 22 MS. ARCHIE: Yes. 23 Commissioner Wainwright?</p>

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Page 41	<p>1 MR. WAINWRIGHT: Well, under</p> <p>2 Robert's Rules of Order, there's a</p> <p>3 provision for communications that the</p> <p>4 Chair usually has to discuss any</p> <p>5 communications that have been made</p> <p>6 between meetings. That'd be a good place</p> <p>7 to do that.</p> <p>8 MS. ARCHIE: I would agree</p> <p>9 with you, but, you know, a lot of us -- I</p> <p>10 just want it out on the full table. I</p> <p>11 mean, it's implied in Robert's Rules of</p> <p>12 Order; it's there, but it's better if we</p> <p>13 just have it so no one will think we're</p> <p>14 trying to not give -- that we're trying</p> <p>15 to hide something. I prefer it be out in</p> <p>16 the open.</p> <p>17 I know we operate under</p> <p>18 Robert's Rules of Order, but at the same</p> <p>19 time, you know, it doesn't -- it doesn't</p> <p>20 hurt to have it fully spelled out, in my</p> <p>21 opinion.</p> <p>22 MR. PHILLIPS: I agree.</p> <p>23 MR. TAMBLING: So anyways,</p>	Page 43	<p>1 MR. PHILLIPS: I'll be</p> <p>2 there.</p> <p>3 MS. THOMAS: And what time</p> <p>4 would you propose?</p> <p>5 MS. ARCHIE: I think we need</p> <p>6 to dispose of the procedural matter</p> <p>7 first, number one, that -- that I think</p> <p>8 what we have on the table is -- don't we</p> <p>9 need a motion to say that we're going to</p> <p>10 try to adopt this resolution, vote upon</p> <p>11 that, and in somewhere in the motion, say</p> <p>12 that we will take this up prior</p> <p>13 to -- hour before the meeting of the full</p> <p>14 Environmental Management Commission?</p> <p>15 MR. PHILLIPS: Or at the</p> <p>16 next -- or just the next Rulemaking</p> <p>17 Committee and just settle it there.</p> <p>18 MS. ARCHIE: Yes, yes.</p> <p>19 MR. PHILLIPS: I move that</p> <p>20 we do that.</p> <p>21 MR. TAMBLING: I think what</p> <p>22 you're saying is that you're going to</p> <p>23 move that we work on this some more so</p>
Page 42	<p>1 when this is voted on in a couple of</p> <p>2 minutes, Debi will prepare an order, I</p> <p>3 suppose, and we will have -- have to get</p> <p>4 Debi to type all that out.</p> <p>5 MS. THOMAS: I've got a</p> <p>6 generic order that we can write the --</p> <p>7 that in, if you would like.</p> <p>8 MR. WAINWRIGHT: Madam</p> <p>9 Chair?</p> <p>10 MS. ARCHIE: Commissioner</p> <p>11 Wainwright?</p> <p>12 MR. WAINWRIGHT: May I</p> <p>13 suggest that we schedule our next meeting</p> <p>14 to be just prior to our Commission</p> <p>15 meeting and take care of this matter</p> <p>16 then, give us some time to think about it</p> <p>17 a little more?</p> <p>18 MS. ARCHIE: Commissioner</p> <p>19 Phillips, any problem with that?</p> <p>20 MR. PHILLIPS: I don't have</p> <p>21 any problem with it.</p> <p>22 MS. ARCHIE: I just hope all</p> <p>23 of us are there at the meeting.</p>	Page 44	<p>1 that we can present it at the next</p> <p>2 meeting but not adopt this right now the</p> <p>3 way -- the language.</p> <p>4 MS. ARCHIE: Yeah. That's</p> <p>5 it. So we don't need any motion for</p> <p>6 that. Okay? All right?</p> <p>7 MR. WAINWRIGHT: Fine.</p> <p>8 MS. ARCHIE: Commissioner</p> <p>9 Phillips?</p> <p>10 MR. PHILLIPS: Not to beat a</p> <p>11 dead horse, but I think what we've just</p> <p>12 done is a good step forward. And as</p> <p>13 Commissioner Wainwright has pointed out a</p> <p>14 couple of times here, you know, if we do</p> <p>15 a few of these type things that really</p> <p>16 have been issues for us in the past, over</p> <p>17 the course of the next year, we should</p> <p>18 really clean up a lot of what's on these</p> <p>19 lists.</p> <p>20 However, I think it's</p> <p>21 important that as a Committee we're able</p> <p>22 to communicate back to the Chair and</p> <p>23 probably to the full Commission at our</p>

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<p>1 next meeting that -- you know, why we 2 selected the one we selected, why we 3 selected that one issue over any of the 4 others in here. 5 My answer to that is 6 actually one of the first ones on the 7 piece of paper. It's in the first -- 8 first section that we had. But I would 9 be remiss if I didn't point out that the 10 view of what we just talked about is not 11 shared by every Commissioner. So -- and 12 there have -- there are some 13 Commissioners that have made it very 14 clear that they do not believe that it is 15 the right of any Commissioner, including 16 the Chair, to tell them that they can't 17 direct the Director. 18 So we just need to be aware 19 of that and -- I do not agree with that. 20 I think what we're doing is the right 21 steps, but we just need to be aware of 22 that so that when we take it forward we 23 have our rationale about why we're doing</p>	<p>1 on how do we address these other issues 2 that are in the document. 3 I believe that what we just 4 did here in the last 30 minutes is very 5 critical so far as the operation of the 6 Commission over the next year; but at the 7 same time, that we also come back where 8 we started an hour ago saying with how we 9 deal with the rest of this, and you and I 10 have a conversation and then I make a 11 report to the -- to the full Commission. 12 Is that acceptable? 13 MR. TAMBLING: Right. 14 Because I think we still need to identify 15 which of these, including this, need to 16 go through rulemaking. 17 MS. ARCHIE: Yes. 18 MR. TAMBLING: Because this 19 may need to go through rulemaking. We 20 just need to make sure. 21 MR. PHILLIPS: Madam Chair? 22 MS. ARCHIE: Commissioner 23 Phillips?</p>
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<p>1 this. That's all. 2 MR. TAMBLING: I have a 3 question before we adjourn. 4 MS. ARCHIE: Yes, Mr. 5 Tambling? 6 MR. TAMBLING: You, the 7 Chair, and I are going to continue to 8 work on this list; is that correct? 9 MR. WAINWRIGHT: On this 10 resolution. 11 MR. TAMBLING: Are you 12 talking about the resolution or the list 13 and the resolution? 14 MR. WAINWRIGHT: (Inaudible.) 15 MS. ARCHIE: No. 16 MR. PHILLIPS: We talked about 17 both. 18 MS. ARCHIE: We talked about both. 19 I agree with Commissioner Phillips that we 20 need -- we owe that to the rest of the 21 Commissioners. We did pick out just one 22 item out of a six-page document; that we 23 need to also come back with a full report</p>	<p>1 MR. PHILLIPS: I think we 2 also need -- I agree with what you just 3 said. I don't know if we need a motion 4 for you two to work together to do that, 5 but I think there is also the issue of 6 the request by the Chair for us to 7 specifically deal with the issue of the 8 authority of the Chair and the 9 Vice-Chair. So I would just ask that as 10 you go through that, include the written 11 request of the Chair along with that 12 document. 13 MR. TAMBLING: Okay. 14 MR. WAINWRIGHT: You've got 15 the rules to look at, and you've got 16 Robert's Rules of Order and how they 17 apply to the authority of the Chair. 18 MR. TAMBLING: Well, I'll be 19 calling you, Mr. Wainwright. 20 MR. WAINWRIGHT: We're 21 looking at something I think is 22 relatively new, and that is to give 23 direction to the Director. And I want to</p>

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<p style="text-align: right;">Page 49</p> <p>1 be sure from the legal department of the 2 agency as well as from our legal end of 3 it that we've got the authority to give 4 him certain direction. That's what we're 5 -- the door we're opening with this. 6 MS. ARCHIE: Mr. Phillips? 7 MR. PHILLIPS: I also would 8 add to what Commissioner Wainwright said, 9 something that he pointed out earlier 10 that we just haven't been clear about, 11 and that is please look at the citation 12 that we use in here relative to Robert's 13 Rules and make sure that it's very clear 14 what we're going to be using as Robert's 15 Rules of Order. As Commissioner 16 Wainwright pointed out, it's not very 17 clear. 18 MR. WAINWRIGHT: There's 19 several -- 20 MS. ARCHIE: Commissioner 21 Wainwright? 22 MR. WAINWRIGHT: Excuse me. 23 There are several things in here that</p>	<p style="text-align: right;">Page 51</p> <p>1 code of conduct. And in this review will 2 be the review of any potential rules, 3 because I think we already covered the 4 fact that we probably need to revisit our 5 rules. Those are two items. 6 MR. WAINWRIGHT: Sounds 7 good. 8 MS. ARCHIE: Okay? Do I 9 have any more discussion? 10 MR. PHILLIPS: I move we 11 adjourned, Madam Chair. 12 MR. WAINWRIGHT: Second. 13 MS. ARCHIE: We stand in 14 adjournment. 15 16 17 18 19 20 21 22 23</p>
<p style="text-align: right;">Page 50</p> <p>1 need amending as we go through this year. 2 Item .03, Item .06 can be dropped from the 3 rules. 4 MR. PHILLIPS: Which one is 5 that? 6 MR. WAINWRIGHT: That's the 7 one that gives the current Chair and 8 Vice-Chair -- that allows them to 9 continue when this was developed. That's 10 just an enabling statement that's not 11 needed anymore. Clarification on the 12 Robert's Rules of Order. 13 MS. ARCHIE: Okay. Let 14 me -- let me offer this then so we can 15 wrap up. At the -- at the next rules 16 Committee meeting, which we're going to 17 hold one hour prior to the actual regular 18 scheduled meeting of the Commission, that 19 there be two items on the agenda: One is 20 the resolution that we discussed here 21 today; the second one is actually the 22 document that was pulled together, 23 comments from the Commission so far as a</p>	<p style="text-align: right;">Page 52</p> <p>1 * * * * * 2 REPORTER'S CERTIFICATE 3 * * * * * 4 5 STATE OF ALABAMA 6 COUNTY OF MONTGOMERY 7 8 I, Jenny Cone, Certified Court 9 Reporter and Notary Public in and for the 10 State of Alabama at Large, do hereby 11 certify that the foregoing is a true and 12 accurate excerpt of the proceedings as 13 taken stenographically by me at the time 14 and place aforementioned. 15 This 14th day of January, 2009. 16 17 18 19 20 21 22 23</p> <hr/> <p>Jenny Cone Certified Court Reporter (Lic. #108) and Notary Public State of Alabama at Large</p>

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* * * * *

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, Jenny Cone, Certified Court
Reporter and Notary Public in and for the
State of Alabama at Large, do hereby
certify that the foregoing is a true and
accurate excerpt of the proceedings as
taken stenographically by me at the time
and place aforementioned.

This 14th day of January, 2009.

Jenny Cone /ca

Jenny Cone

Certified Court Reporter (Lic.

#108) and Notary Public

State of Alabama at Large

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Part B

Attachment 1

12/17/08

AGENDA*
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION
RULEMAKING COMMITTEE MEETING
Alabama Room (Main Hearing Room)
Alabama Department of Environmental Management Building
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
January 9, 2009
11:00 a.m.

ITEMS

1. Consideration of minutes of meeting held on June 1, 2007**
2. Discussion and consideration of Commission rules of conduct to recommend to the full Commission for rulemaking
3. Other business

* The Agenda for this meeting will be available on the ADEM website, www.adem.state.al.us, under EMC Information and Calendar of Events.

** The Minutes for this meeting will be available on the ADEM website under EMC Information.